

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 40 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

ISHWARJI BADARJI PARMAR

Appearance:

MR BY MANDAK APP for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 23/09/1999

ORAL JUDGEMENT

This appeal is preferred by the State under sec.
378(1)(2) of Cr.P.Code against the judgment and order of
acquittal passed by the learned Judicial Magistrate,
First Class, Bayad on 25.6.1998 in Criminal Case No.
437/95. Accused came to be acquitted on the ground that
the trial could not be concluded within three years from
its commencement and, therefore, in view of the judgment
of the Apex Court in the case of Common Cause Registered

Society v/s Union of India, reported in AIR 1996 SC 1619 and subsequent clarificatory orders.

After going through the judgment of the Apex Court referred to above and subsequent clarificatory orders, I am satisfied that the acquittal recorded by the learned Trial Judge is an error and is not in accordance with the principle laid down in the aforesaid decision. This is a case where the Court has never tried to secure presence of the accused. Delay in commencement of trial or its conclusion was caused only because of the accused and there was no lapse on the part of the prosecution. Irrespective of the gravity of the offence, the basic principle of law cannot be ignored and learned Magistrate ought not to have acquitted the accused by passing cursory order without perusing even Rojanama lying before it. Without commenting on the merits or the procedure adopted by the learned Magistrate, in my view, this is a fit case where discretion of this Court should be exercised and matter should be restored back to the learned Magistrate for trial afresh.

Under the circumstances, appeal is allowed. Impugned judgment and order dated 25.6.1998 passed by the learned Judicial Magistrate, First Class, Bayad in Criminal Case No. 437/95 is hereby quashed and set aside. Matter is remanded back and aforesaid criminal case is ordered to be restored on the file of the learned Magistrate concerned for trial afresh and in accordance with law.

Before parting with this order, I would like to state that though other side (original accused) is served, he has not cared to appear in response to the notice issued and served by this Court.

23.09.1999 [C.K. BUCH, J]

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